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CITY OF SAN DIEGO

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May 14, 2002

Exhibit 1h *5/17*  
*File AST 40-449.05*  
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*2002 MAY 16 P 12:21*

Mr. John H. Robertus  
Executive Director  
Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA. 92123-4340

Dear Mr. Robertus:

*Order No. R9-2002-0083*  
*Belt Street Spill of 2/1/01*

As you know, the City of San Diego is assisting the staff in providing a preliminary site conceptual model and workplan for a soil and groundwater investigation pursuant to the above Order.

However, the City does so with an express reservation of rights to challenge any future order on the basis of its being considered a "discharger." The Technical Analysis supporting the inclusion of the City as a "discharger" is based on the flawed reasoning that liability is derived from the mere act of initiating a public work project, hence "the City initiated the action that resulted in the discharge." Technical Analysis, p. 8. Were this true, the City would be exposed as a discharger for all contractor errors, which is clearly not supportable by any authority.

Sincerely yours,

CASEY GWINN, City Attorney

By

*Ted Bromfield*  
Ted Bromfield  
Senior Deputy City Attorney

TB:dr

cc: Barry S. Pulver, Associate Engineering Geologist  
Chris Gonaver, Deputy Director, Environmental Protection Division  
Ted Olson, Program Manager, Underground Storage Tank Program